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OFFICE OF PETITIONS

In re Application of
Curtis Cole et al.
Application No. 09/742,622
Filed: December 21, 2000
Attorney Docket No: JBP-534

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)¹, filed October 13, 2005, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Final Office Action mailed April 21, 2004. A shortened statutory period of three months was set for replying to the Final Office Action. The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application. An amendment was filed July 23, 2004. By Advisory Action mailed August 17, 2004, the Examiner advised that the amendment did not *prima facie* place the application in condition for allowance.

Following the mailing of the Advisory Action, on August 25, 2004, an RCE was filed

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

seeking to have the amendment filed July 23, 2004 as the submission required under 37 CFR 1.114.

The amendment filed July 23, 2004 as the submission for the RCE however, was deemed non-compliant and thus did not meet the requirements of 37 CFR 1.121. A Notice of Non-Compliant Amendment was mailed November 24, 2004. As indicated in the Notice of Non-Compliant Amendment, the period for reply ran from the Final Office Action mailed April 21, 2004 and thus in view of the non-compliant amendment the application became abandoned. Accordingly, a Notice of Abandonment was mailed August 29, 2005.

With the instant petition to revive, petitioner has submitted another amendment as the submission for the RCE filed August 25, 2004 and as required under 37 CFR 1.114.

This matter is being referred to Technology Center 1617 for processing of the RCE and the amendment.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial 'P'.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions